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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,804	11/18/2003	Harald Kloeckner	FA1114USNA	6772

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EXAMINER

MICHENER, JENNIFER KOLB

ART UNIT PAPER NUMBER

1762

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/716,804	Applicant(s) KLOECKNER ET AL.	
	Examiner Jennifer K. Michener	Art Unit 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/18/2003</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1, 3-9, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liedtke et al. (5,871,809) in view of Pfanstiehl (5,730,644).

Liedtke teaches a process for repairing an "old" multi-coat automobile finish. Liedtke teaches, sequentially, preparing the old finish, sanding the old finish, cleaning the sanded repair surface, applying a pigmented base coat, applying a 2-component aqueous clear coat with OH-functional binder and polyisocyanate crosslinker, and curing (col. 2, lines 25-35, 60-65; col. 4, lines 1-15).

All primer and basecoat and other optional layers of Liedtke are applied by spraying. It is therefore Examiner's position that spraying the topcoat of Liedtke would have been obvious to one of ordinary skill in the art of automotive refinishing. Spraying coatings onto automotive panels is well-known in the art of car-coating, as is the use of "conventional spraying viscosities", by nature of their conventionality.

Liedtke teaches the use of a coating technique in which second spray-passes are used to overlap previously coated areas so that the coating blends in and the use of his method for a "repair" coating embodiment, however, Liedtke's disclosure is primarily focused on coating an entire automobile, therefore he does not include all the specifics of Applicant for the coating requirements of repairing local blemishes.

Pfanstiehl teaches a method of repairing automobile paint blemishes. For local repair of blemishes, Pfanstiehl teaches that adherence of paint to a local area requires the blemish and surrounding paint to be sufficiently "scuffed" (col. 1, lines 38-41). When sanding is used to remove the blemish and scuff the surrounding areas (called "feather

edging”), the sanding removes layers of paint contiguous to the chipped area. After sanding, Pfanstiehl teaches that when a surface is feather edged, the subsequent touch-up paint coatings must cover the blemish and fill the contiguous areas in decreasing thickness as they approach the edges of the sanded areas. This provides a smooth, unbroken surface to the restored paint finish.

Since Liedtke teaches repairing “old” automotive paint finishes by sanding and repainting, and Pfanstiehl teaches that the repair of a blemish in such an “old” paint finish requires feather edging during the sanding step and a “blending in” (or fading out) of the subsequently applied paint layers, Pfanstiehl would have reasonably suggested that the sanding and re-painting steps of Liedtke be performed not only on the blemished area, but on the surrounding area as well. It would have been obvious to one of ordinary skill in the art to use the teachings of Pfanstiehl in the method of Liedtke to provide Liedtke with a smooth, unbroken finish when repairing local blemishes in paint finishes.

Liedtke teaches curing at less than 100 °C (col. 4, line 17), overlapping the ranges claimed by Applicant.

Overlapping ranges are *prima facie* evidence of obviousness. It would have been obvious to one having ordinary skill in the art to have selected the portion of Liedtke’s range that corresponds to the claimed range. *In re Malagari*, 184 USPQ 549 (CCPA 1974).

The clearcoat of Liedtke is an OH-functional poly-acrylate (col. 4, line 43).

The basecoat of Liedtke is aqueous-based and physically dries (col. 3, line 10).

It is Examiner's position that spraying viscosity would be optimized by one of ordinary skill in the art based on the speed of spray-pass and the desired coating thickness.

It is well settled that determination of optimum values of cause effective variables such as these process parameters is within the skill of one practicing in the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980).

5. Claims 2, 10-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liedtke in view of Pfanstiehl as applied to claims 1, 3-9, and 16 above, and further in view of Stengel et al. (5,545,824).

Liedtke in view of Pfanstiehl teach that which is disclosed above, but fail to teach that the pigments of the basecoat of Liedtke may be applied in the clear topcoat of Liedtke. Stengel teaches that in coating automobiles, a pigmented basecoat maybe be overcoated with a clear topcoat, similar to Liedtke. Alternatively, Stengel teaches that the topcoat may also contain pigments which provide color to the topcoat or that a single pigment coating composition can be used.

Since Liedtke in view of Pfanstiehl teach repairing an automotive paint finish with a "color plus clear" type of coating system and Stengel teaches that such systems may be interchanged for a 2-part system in which both layers contain pigment or for a 1-part

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system that contains pigments, Stengel would have reasonably suggested the use of pigments in the topcoat of Liedtke or the use of a 1-layer pigmented system. It would have been obvious to one of ordinary skill in the art to use the interchangeability teachings of Stengel in the method of Liedtke in view of Pfanstiehl to provide a pigmented topcoat or single, pigmented coating to the Liedtke in view of Pfanstiehl teachings because Stengel teaches that the use of such systems are also effective in coating automobiles.

The subject matter of claims 10-12, 14-15, and 17 has been addressed above.

Liedtke teaches the use of a primer surfacer "pre-treatment" layer prior to applying the pigmented basecoat/topcoat layer(s) (col. 2, line 54).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer K. Michener whose telephone number is (571) 272-1424. The examiner can normally be reached on Monday through Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on 571-272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J Kolb Michener", with a stylized flourish at the end.

Jennifer Kolb Michener  
Patent Examiner  
Art Unit 1762  
September 4, 2004